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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SALON SERVICES AND SUPPLIES, INC., a Washington corporation, Plaintiff, v. DERMALOGICA, LLC, a California limited liability company Defendant.	CASE NO. COMPLAINT FOR INJUNTIVE RELIEF, DECLARATORY JUDGMENT AND DAMAGES

Salon Services and Supplies, Inc. ("SSS"), by and through its attorneys, and by way of complaint against Dermalogica, LLC, hereby alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. SSS is a Washington corporation with its principal place of business at 740 SW 34th Street, Renton, Washington 98057.

2. SSS is informed and believes, and thereon alleges, that Dermalogica, LLC (the "Defendant"), is a California limited liability company, having its principal place of business at 1535 Beachey Place, Carson, California 90746.

3. This Court has personal jurisdiction over the Defendant because the Defendant has a continuous, systematic, and substantial presence within this judicial district, including by selling and offering for sale products in this judicial district. The acts of the Defendant form a substantial part of the events or omissions giving rise to SSS's claims.

4. This Court has jurisdiction under 28 U.S.C. §1332 based on diversity of citizenship. The amount in controversy exceeds $75,000 exclusive of interests and costs.

5. Venue is proper in this judicial district under 28 U.S.C. §§1391(b) and 1391(d).

GENERAL ALLEGATIONS

6. Defendant manufactures and sells skincare and other personal care products under its Dermalogica brand in over 80 countries around the world.

7. Defendant's products include in-home products as well as a specialist offering for professional skin care therapists.

8. The Dermalogica brand is sold in locations where there is a licensed skincare professional who can provide customers training and advice on how to address various skin conditions that Defendant's products are designed to remedy.

9. Since 1993, SSS has been the exclusive distributor of Defendant's products in Washington, Oregon, Idaho and Montana (the "Territory"), pursuant to distribution agreements that have been renewed over the years.

10. The current terms of the parties' exclusive distributorship agreement are set forth in that certain Distribution Agreement dated January 1, 2016 (the "Distribution Agreement").

11. Pursuant to the Distribution Agreement, Defendant agreed it would not sell any of its products to another distributor in SSS's territory.

12. The Distribution Agreement permits Defendant to sell products directly to certain retail customers (defined as "Key Account Customers") in

SSS's territory.

13. Defendant has threatened to enter, or has entered, into an agreement with third party SalonCentric for distribution of Dermalogica products in SSS's exclusive territory.

14. SalonCentric is a nationwide wholesale salon and beauty supply distributor.

15. SalonCentric's own website and promotional materials describe the company as a distributor.

16. SalonCentric operates hundreds of stores throughout the United States and sells exclusively to licensed professionals.

17. Only licensed professionals are permitted to enter SalonCentric's stores.

18. SalonCentric is not a retail outlet.

19. The parties agreed that California law will govern the construction, interpretation, validity and enforcement of the Distribution Agreement and will be applied to resolve all disputes between them.

20. Pursuant to the Distribution Agreement, and the parties' previous agreements over the years, Defendant provided substantial assistance to SSS and exercise substantial control over SSS's business.

21. SSS has and continues to markets goods and services under Defendant's trademarks and other intellectual property rights pursuant to a marketing plan or system prescribed in substantial part by Defendant, and there has been and continues to be a community interest between the parties in the goods and services sold under Defendant's marks.

22. To obtain the exclusive distribution rights and right to use Defendant's marks, SSS has been required to make certain non-*de minimus* payments for the right to sell Defendant's goods and services that were not limited to the *bona fide* wholesale price of the goods.

23. SSS is current on all its payment and other obligations to Defendant under the Distribution Agreement.

24. At no time before offering the Distribution Agreement or any prior distribution agreements to SSS did Defendant ever provide SSS with a franchise offering circular or franchise disclosure document in accordance with California's Franchise Investment Law.

25. Over the years, SSS has invested substantial time and money in building name recognition for and brand equity in Defendant's products.

26. SSS has cultivated its relationships with many salons and skin care professionals, who have grown to associate SSS as the sole and exclusive source

of Dermalogica products.

27. Defendant's transaction with SalonCentric will diminish and terminate rights previously granted to SSS as the exclusive dealer of Defendant's products in the Territory, for reasons unrelated to SSS's performance and without good cause.

28. If Defendant is allowed to sell products to SalonCentric or other third-party distributors for sale in the Territory, SSS will suffer irreparable injury to its reputation and goodwill.

29. The loss of that goodwill will threaten SSS's market share as a provider of skin care products if it is not adequately and immediately remedied through injunctive relief.

30. SalonCentric is a direct competitor of SSS, and if it is allowed to start selling Defendant's products in the Territory, it will undermine the relationships that SSS has built up, and Defendant will be put at real risk of losing customers and accounts.

31. SSS's sales revenues over the last three years have averaged more than $3.8 million per year.

32. If SalonCentric starts distributing Defendant's products in the Territory, SSS stands to lose significant business, and potentially half of its

revenues.

FIRST CLAIM FOR RELIEF

(Injunctive Relief)

33. SSS repeats and realleges the allegations of the foregoing paragraphs as if fully set forth herein.

34. If Defendant is not restrained and enjoined from selling products to SalonCentric for distribution in SSS's territory in breach of the Distribution Agreement, SSS will suffer immediate, irreparable and substantial injury.

35. Defendant should be restrained and enjoined from selling products to SalonCentric for distribution in SSS's territory.

SECOND CLAIM FOR RELIEF

(Breach of Contract)

36. SSS repeats and realleges the allegations of the foregoing paragraphs as if fully set forth herein.

37. The Distribution Agreement is a binding and valid contract.

38. SSS has performed its obligations under the contract.

39. Defendant has breached the contract by agreeing to sell its products to another distributor for distribution in SSS's exclusive Territory.

40. SSS will suffer damages as a direct and proximate result of Defendant's breach of contract in an amount to be determined at trial.

THIRD CLAIM FOR RELIEF

(Breach of Implied Covenant of Good Faith and Fair Dealing)

41. SSS repeats and realleges the allegations of the foregoing paragraphs as if fully set forth herein.

42. The parties have a contractual relationship pursuant to the Distribution Contract.

43. Defendant had implied duties to act at all times in good faith and deal fairly with SSS, and not to engage in any act that would prevent SSS from realizing the full benefit of the Distribution Contract.

44. Defendant breached its implied duties by agreeing to sell its products to another distributor for distribution in SSS's exclusive Territory.

45. SSS suffered damages as a direct and proximate result of Defendant's breaches in an amount to be determined at trial.

FOURTH CLAIM FOR RELIEF

(Declaratory Judgment)

46. SSS repeats and realleges the allegations of the foregoing paragraphs as if fully set forth herein.

47. A "franchise," as defined by the California Franchise Investment Law and the California Franchise Relations Act, is an agreement between two or more persons by which a franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor, the franchisee's business is operated pursuant to the franchisor's plan or system and substantially associated with the franchisor's marks, and the franchisee is required to pay a franchise fee. *See* Cal. Corp. Code §31005(a); Cal. Bus. & Prof. Code §20001.

48. SSS in entitled to a judgment declaring that the Distribution Agreement is a franchise.

49. SSS is a "franchisee" within the meaning provided in the California Franchise Investment Law and the California Franchise Relations Act, and falls within the class of persons that the laws are intended to protect. Cal. Corp. Code §31006; Cal. Bus. & Prof. Code §20002.

50. Defendant is a "franchisor" within the meaning of the California Franchise Investment Law and the California Franchise Relations Act. Cal Corp. Code §31007; Cal. Bus. & Prof. Code §20003.

51. SSS is entitled to a judgment declaring that Defendant's sale of products to SalonCentric or any other third-party distributor for distribution in

SSS's exclusive Territory is an unlawful termination or modification of SSS's exclusive distribution franchise.

52. SSS is entitled to a judgment declaring that Defendant has terminated, attempted to terminate or constructively terminated SSS's exclusive distribution franchise in violation of California's Franchise Relations Act.

53. SSS is entitled to a judgment declaring that Defendant has substantially changed or attempted to substantially change the competitive circumstances of the Distribution Agreement's exclusive distribution provisions in violation of California's Franchise Relations Act.

FIFTH CLAIM FOR RELIEF

(Violation of the California Franchise Investment Protection Act)

54. SSS repeats and realleges the allegations of the foregoing paragraphs as if fully set forth herein.

55. The events giving rise to SSS's claim for violation of the California Franchise Investment law, including negotiation and signing of the distribution agreements, occurred at least in part in California, and the agreements provide that California law governs the agreements and any disputes between the parties.

56. SSS was at all relevant times engaged in commerce by selling and distributing Defendant's Products pursuant to the Distribution Agreement.

57. SSS and Defendant have been involved in a commercial relationship pursuant to the Distribution Agreement, and prior distribution agreements.

58. Section 31202 of the California Corporations Code makes it unlawful for any person to willfully make any untrue statement of material fact, or willfully to omit to state any material fact, in any statement required to be in disclosed in writing pursuant to Section 31101.

59. Sections 31300 and 31301 provide that an aggrieved party may recover damages from a person who offers a franchise in violation of Section 31101, and if such violation is willful, the aggrieved party may sue for rescission of the offer.

60. As a franchisor, Defendant was required to make certain disclosures to SSS, and to disclose any material modification of an existing franchise, identifying and describing the modification. Cal. Corp. Code. §31101(c).

61. Defendant never provided SSS with the necessary disclosures, either at the outset of their franchise relationship, upon the renewal of their distribution agreements, or on connection with the Distribution Agreement.

62. Each time Defendant failed to provide the necessary disclosures, Defendant thereby violated the California Franchise Investment Law.

63. As a direct and proximate result of Defendant's violations, SSS has suffered and continues to suffer damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, SSS prays for the following relief:

1. Injunctive relief enjoining Defendant from violating the exclusive distribution provisions of the Distribution Agreement;

2. A declaration and determination that Defendant's sale of products to SalonCentric or any other third-party distributor for distribution in SSS's exclusive Territory constitutes a wrongful termination of SSS's exclusive distributorship franchise rights;

3. An award of monetary damages to SSS against Defendant in an amount to be determined at trial;

4. Restitution in an amount to be determined at trial;

5. An award of SSS's costs and attorneys' fees as permitted by contract or by law; and

6. Such other relief as the Court finds just and appropriate.

DATED this 3rd day of March, 2017.

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